UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
DENISE R. CARPENTER-FOLTZ,	)	CASE NO. 02-30413 HCD
	)	CHAPTER 7
	)	
DEBTOR.	)	

Appearances:

Elden E. Stoops, Jr., Esq., attorney for debtor, 204 West Main Street, North Manchester, Indiana 46962;

Stephen H. Downs, Esq., attorney for Frances Slocum Bank, Tiede, Metz & Downs, 99 West Canal Street, Wabash, Indiana 46992;

Christopher S. Riley, Esq., attorney for Lowe's Companies, Inc., Barnes & Thornburg, 121 West Franklin Street, Suite 200, Elkhart, Indiana 46516; and

Joseph D. Bradley, Esq., Trustee, 105 East Jefferson Boulevard, Suite 512, South Bend, Indiana 46601.

MEMORANDUM OF DECISION

At South Bend, Indiana, on September 30, 2003.

The debtor Denise R. Carpenter-Foltz ("debtor") has brought before the court a Motion to Avoid Judicial Liens. Objections to the Motion were filed by the Frances Slocum Bank ("Bank" or "creditor") and Lowe's Companies, Inc. ("Lowe's" or "creditor"). A trial on the matter was held on June 2 and 24, 2003. The issue at trial was the valuation of the debtor's residence. For the reasons set forth herein, the court denies the debtor's Motion to Avoid Judicial Liens.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(K) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1)

and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 9014. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

On February, 10, 2003, the debtor reopened her bankruptcy case and filed a Motion to Avoid Judicial Liens. She had filed her voluntary chapter 7 petition on January 30, 2002, and was discharged on May 13, 2002. Her case was closed the same day. However, she now seeks to avoid the Bank's $17,676.60 judgment lien and Lowe's $4,802.70 judgment lien on the ground that they impair an exemption on her residential real estate in Wabash, Indiana.[1] She stated that the value of the real estate at the time of filing her chapter 7 petition was $70,000 and that the first mortgage on the property was $66,000. Attached to the motion was an appraisal of the property, in the amount of $70,000, by David R. Metz, Indiana Certified General Appraiser, dated August 9, 2001. The debtor asserted that the equity is within the limits of her allowed exemption and that she had reaffirmed her mortgage debt.

The Bank filed its Objection to Debtor's Motion to Avoid Judicial Liens on February 25, 2003. It asserted that the real estate at issue had a fair market value of $99,500, not $70,000, as of the date of the debtor's petition on January 30, 2002. It claimed that, after payments of the amounts due for the mortgage debt and the lienholders, there still would remain equity in the real estate that was "well in excess of debtor's exemption." R. 17.

Lowe's also filed an Objection to Motion to Avoid Judicial Liens. It asserted that the fair market value of the debtor's property was greater than she alleged. According to Lowe's, the August 2001 appraisal was

[1] The debtor's motion to avoid liens also listed a judgment lien held by Mark C. Guenin, counsel for her former spouse in their dissolution of marriage, in the amount of $2,177. At trial, however, the debtor testified that the Guenin judgment lien has been paid and is released.

no longer accurate, but the appraisal conducted on February 13, 2003, by Beth A. Phillipy of Metz Appraisal Offices, valuing the residence at $96,000, was appropriate. The creditor argued that its lien, when coupled with the debtor's remaining mortgage obligation, does not impair her exemption rights.

A trial on the debtor's motion to avoid liens and objections thereto was held on June 2, 2003. The first witness was the debtor Denise Carpenter-Foltz. She testified that, at the time she filed bankruptcy, her house was worth $70,000 and the balance on her mortgage was about $66,000. Therefore, she stated, she had equity at the time of about $4,000. She described her home as an older house that sits on nine acres of land, including rolling meadows, woods and a stream. She told the court that she had released one acre of that land for her son to build a home there.

She explained that the problems leading to her bankruptcy filing began in 1999, when she started some extensive remodeling on her house. She herself did much of the work, she said, but she also hired a man from Lowe's named Rick Fogelsanger. He did not do the work, however. He mishandled the electrical work in 1999 or 2000 and left her with wiring problems. The debtor submitted to the court photographs of rusty electrical boxes. She testified that she was not able to complete the work on the house, and it now is deteriorating: Some of the siding has come down, and birds have made nests in three places. As a result, she testified, her son cannot sleep in his bedroom. She added that hail caused damage to the roof. She has had trouble with the plumbing, the septic system, and the well. In August 2001, she decided to file bankruptcy. On her petition she used the appraisal from the Metz Appraisal Offices as the value of her house. She acknowledged that the Bank and Lowe's hold judgment liens and both are listed as creditors in her bankruptcy.

The debtor borrowed $18,000 from the Bank in 1999, to buy a camper. She and Rick Fogelsanger signed the loan papers; however, he ended up with the camper, she said. She told the bank that the property was worth about $118,000, because she guessed that was what the property would be worth when the remodeling was finished. The loan application indicates that she valued her property at $118,000. She explained that she had

been a licensed real estate agent for a year, but that she lost her license two years ago. Nevertheless, she testified, with her background she understood the fair market value of the property.

The debtor told the two appraisers, Phillipy and Lundquist, of the problems she had with the unfinished remodeling. She admitted, as well, that she told Lundquist that everyone knew what her house was worth and that, if they found out that the value she gave the bank was incorrect, she could be charged with fraud. She insisted, however, that she has done nothing fraudulent. She testified that she loves her home and values it at $70,000 now but at $118,000 if the work is finished. However, she admitted that she did not get an estimate from her insurance company, after the hail storm damage, because she could not pay the deductible amount of the repairs.

The creditors then called the first appraiser to testify. Beth Phillipy was a residential appraiser who has worked for ten years with Metz Appraisal. She conducted an appraisal of the debtor's residential property for Lowe's. That appraisal was a drive-by, and she arrived at a value of $96,000 without seeing the interior of the property. She testified that she now believes that appraisal was not accurate.

Then debtor's counsel contacted her supervisor, David Metz, who had done an earlier appraisal for the debtor. Beth Phillipy subsequently did a second appraisal, this time for the debtor. She examined the interior of the house and focused on such exterior problems as the missing siding on the back of the home, which she did not see during the drive-by. Inside, she found, sections of the floor were damaged and the walls needed patching and painting. The west end of the barn was missing. She then re-evaluated the home and appraised the value as $70,000. She discussed with David Metz the prior appraisal he had done on August 8, 2001. In March 2003, she compared the appraisals and believed that both appraisals, his in August 2001 and hers in March 2003, were accurate.

On cross-examination, she stated that she was hired by Lowe's attorneys to make a drive-by appraisal and then by the debtor to conduct an interior inspection as well. Although she admitted that she knew of David Metz's earlier appraisal at $70,000, she stated that she had no target valuation amount in mind. She noted that

the $96,000 valuation stated that all sales were subject to interior review. In her second appraisal, the $70,000 valuation took into consideration the inside of the home and the barn. She admitted that the comparable properties she used in her lower appraisal were reduced in value. She also stated that, when calculating the lower appraisal, she did not talk to any contractors or carpenters to estimate the cost of siding or other repairs. Nevertheless, she insisted that her supervisor, David Metz, did not give her an instruction concerning the appraisal value she should find. Instead, she was of the opinion that the $70,000 appraisal was the accurate one.

Next to testify was Mark Shelley, a consumer loan officer at Frances Slocum Bank who made the loan to the debtor and Rich Fogelsanger in 1999. On the loan application, he pointed out, the debtor listed the value of her home as $115,000. He did not recall that she said the valuation was based on the value of the home after it was renovated. He testified that the bank now has a judgment against the debtor, taken on October 8, 2001, for $17,676.60. He stated that they have received no payments and that the debt is accumulating at an interest rate of 8%. However, the debt is subject to a mortgage held by the credit union. He acknowledged, as well, that one acre was released from the lien of the mortgage.

The Bank's next witness was appraiser Robert J. Lindquist, a co-owner of Lundquist Associates. He testified that he has been in the real estate business over 23 years and is a certified general appraiser, which is the highest level of appraiser in Indiana. He handles appraisals mostly of residential property, but also of farms, and does 250-300 appraisals a year. He appraised the debtor's property. It is a home of 1,932 square feet which is 87 years old, with substantial improvements made over the years. There are 9 acres of land, and it is situated half a mile from the city of Wabash, near a golf course, a country club and schools. It has a good location, he concluded.

He reviewed the property several years ago and again recently, on January 22, 2003. In his opinion, the fair market value of the house was $99,500. He defined "fair market value" as the value of property when neither the buyer nor the seller is compelled to act. He did an exterior inspection first, and then an interior appraisal on April 23, 2003. His view of the interior of the home did not change his opinion of value, he stated.

He considered the interior to be typical of what he sees in 87 year-old farm houses. It was remodeled from the studs up. There was a little something in each room that needed to be completed, he said, but nothing about the house was in bad condition. He testified that he saw nothing to convince him that the house was defective. He noted that about 75% of the siding was complete.

He testified that he relies on the sales comparison approach, rather than the income or cost approaches, and compares the property to something that has recently sold. He reviewed Beth Phillipy's appraisals and compared his opinion with hers. Her drive-by appraisal is about the same as his full appraisal, he stated. However, he has not seen an appraisal before that has made such a large adjustment for the interior condition of a home. He pointed out that the areas in which they disagree include the gross living area, the site value, and the cost to reproduce. He thinks that the significant difference between their valuations is in the site value. She adjusted for the site at about $1,000 an acre, but he thinks it should be an adjustment of $2,500-3,000 an acre. In his opinion, by comparing other sales in the area, he thinks the range of $2,500-3,000 an acre for Wabash County is more accurate. He described the rolling tract, with its woods and creek, and its proximity to the town and golf course. He did not realize that one acre had been released. In his view, that one acre would sell easily for $12,000. He believed that the remaining eight-acre tract still would sell for the mid to upper $90,000 range.

Lundquist testified that he saw no structural deficiencies in the house and that the debtor did not tell him of any. In his view, the house alone, on perhaps one acre, has a value in the $80,000 range, and the remaining land without the home should bring $4,000 an acre. He stated that he had reviewed Phillipy's cost approach and found that it did not ring true. In his opinion, her appraisal was too low.

On cross examination, he stated that the interior of the debtor's home appeared to be a typical remodeled farmhouse. When he was shown the photographs of the electric boxes, he commented that they were not untypical and that exposed wiring always looked bad. He believed that the inside condition of the home was not unusual or shabby for such an old home. He remembered that the debtor had told him that some of the

material, like the trim, was in the house but just had not been installed. The appraiser was not sure this property could be divided into small tracts. He believed that about half of the land was wet ground. He did not think that the hog lot across the street affected the property value. His 1995 appraisal concluded that the value of the debtor's home was $74,000. His later appraisal went up because of the passage of time, increased inflation, and completely different comparable sales. He noted that the economy in Wabash County is quite stable.

On June 24, 2003, the court held the continued hearing on the value of the debtor's residence. The court heard the testimony of the debtor's last witness, an appraiser who had failed to appear at the earlier hearing. Brian Shearer is a licenced appraiser who has been a real estate broker for twelve years and has held a residential license for four years. He stated that he is familiar with the Wabash County area. He was hired by the debtor to appraise her home. On May 13, 2003, he conducted the appraisal using the cost method and the sales comparison method. He said the interior of the house needs quite a bit of finishing work, particularly the plumbing and electric fixtures. On the exterior of the house, the roof, siding and windows need work. He stated his opinion that the value of the home in the condition he saw, on the day he was there, was $75,000. The value could appreciate if the home were remodeled and updated. However, he explained that the real estate market, which has a great effect on the value of a home, had been strong in Wabash County several years ago but now was just holding stable. Moreover, he pointed out, some industry has moved out of the area and the foreclosure rate in the county and in Indiana is one of the highest in the nation. As a result, he stated, appraisers have become conservative.

On cross examination, Shearer stated that he now works in Marion, Indiana, but that twenty percent of his business comes from Wabash County. Most of his appraisals are done for banks rather than for individuals. He reported that the debtor asked him to give an opinion of the value of the home, but she did not tell him the purpose of the appraisal. The appraisal of $75, 000 was a fair market value, the most probable sales price for the home on the day he was there. His appraisal anticipated that the house would be sold on the open

market within 90 to 120 days. He commented that he was being conservative in his valuation, but that he did not appraise the house at a foreclosure value.

He believed that this house, although an older home, could be improved with the right material and the right contractor. He praised the site, with its rolling ground and creek on the south side of the property, and its location close to schools, golf course and shopping. However, he knew the land was low and could flood. He did not walk through the property and did not know that one acre of it had been sold. He noted that rural property acreage could not be subdivided and therefore adjusted the site value for the 9 acres to $1,000 an acre.

The debtor was called as a rebuttal witness. She reiterated her testimony that the man who worked on her home, Rick Fogelsanger, never finished any of the projects – the siding, deck, interior work, plumbing – and that she has been unable to complete them. He was the same individual who co-signed the loan on a camper with her, she said. However, he has left, and she cannot match the siding material or the kitchen tile.

It was the debtor's closing position that the value of the residence in August 2000, when the debtor had it appraised, was $70,000. She contended that the two judgment liens impair the equity in her home and that she had a right to avoid them.

The creditor, at closing, focused on whether the judgment liens impair the debtor's exemption. The valuations on the debtor's residence were conflicting, but three of the four appraisals reflected a value in excess of the exempted amount. Three out of the four showed that the liens do not impair the exemption. On that ground, the creditors are entitled to pursue the judgment liens.

Discussion

The issue before the court is whether the debtor can avoid judicial liens on her personal residence. Section 522(f) of the Bankruptcy Code gives a debtor the power to avoid a lien on property to the extent the lien impairs the debtor's entitlement to an exemption under 11 U.S.C. § 522(b). Its purpose is to protect a debtor's exemptions and to facilitate a debtor's fresh start; for that reason, § 522(f) is broadly interpreted to accomplish the congressional goal. *See In re Berryhill*, 254 B.R. 242, 244 (Bankr. N.D. Ind. 2000) (citing cases). The

debtor, as the moving party, has the burden of proving the elements of lien avoidance. *See Reece v. Parkview Villas (In re Reece)*, 274 B.R. 515, 517 (Bankr. D. Ariz. 2001) (listing elements); *cf. In re Rae*, 286 B.R. 675, 677 (Bankr. N.D. Ind. 2002) (stating that debtor has responsibility for proving that motion to avoid lien was properly served). She must show that she has an interest in the residence, that she is entitled to the homestead exemption, that the liens at issue impair that exemption, and that the liens are judicial rather than statutory. *See In re Reece*, 274 B.R. at 517.

The court finds first that the debtor properly demonstrated her ownership interest in the residence and claimed the appropriate exemption. She included her residence as part of her bankruptcy estate by listing it on schedule A, with a current market value of $70,000. On Schedule D, she listed the Wabash County Farm Bureau Credit Union as the secured creditor holding a mortgage on her residence in the amount of $66,000. By her valuation, therefore, she has an equitable interest of $4,000 in her residence, and she claimed the $4,000 equitable interest as property of the estate that was eligible for an exemption under Schedule C.

The debtor's interest in her residence is not challenged. Nor do the creditors dispute that the debtor's personal residence is property on which Indiana grants an exemption of up to $7,500. *See* Ind. Code § 34-55-10-2(b)(1).[2] The parties agree, as well, that the liens at issue are judicial. The two liens are the Bank's $17,676.60 judgment lien and Lowe's $4,802.70 judgment lien. They are subordinate to the mortgage lien that the debtor reaffirmed on February 26, 2002. They are subject to avoidance under § 522(f)(1), which provides:

> Notwithstanding any waiver of exemptions . . ., the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is —
>
> (A) a judicial lien . . . .

[2] Indiana has chosen to "opt out" of the federal bankruptcy exemptions given in § 522(d). Its residents are entitled to the state exemptions listed in the state statute. *See In re Salzer*, 52 F.3d 708, 711 nn.2, 3 (7th Cir. 1995) (stating that the nature and extent of allowable exemptions are a matter of state law), *cert. denied*, 516 U.S. 1177 (1996); *In re Berryhill*, 254 B.R. at 243 (explaining Indiana's exemptions).

11 U.S.C. § 522(f)(1)(A). They insist, however, that their liens do not impair that exemption. In contrast, the debtor believes that she may wipe out their interests because her own interest in the personal real property would be exempt if the creditors' liens did not exist. The issue before the court, therefore, is to what extent does the lien impair the debtor's exemption.

To determine whether, and to what extent, a lien impairs the debtor's exemption, the court applies the mathematical formula supplied in the subsection 2 of the avoidance provision:

> (2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of —
> (i) the lien,
> (ii) all other liens on the property; and
> (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;
>
> exceeds the value that the debtor's interest in the property would have in the absence of any liens.

11 U.S.C. § 522(f)(2)(A). This simple arithmetic method of determining whether a lien may be avoided was added to the Code in the Bankruptcy Reform Act of 1994. To determine the extent to which a lien impairs an exemption, therefore, the court adds up all the liens on the property and the state exemption allowance. It then determines whether that sum exceeds the value of the debtor's interest in the property if it were totally unencumbered by liens. *See In re Berryhill*, 254 B.R. at 243.

In this case, the judgment liens on the property are $17,676.60 and $4,802.70, for a total amount of $22,479.30. The balance of the debt secured by the mortgage is $66,000.00. The amount the debtor could claim as an exemption under Indiana law, in the absence of any liens, is $7,500.00. The total amount, the sum of the liens and the exemption, is $95,979.30. The question is whether that sum exceeds the value of the debtor's interest in the property in the absence of liens. The debtor asserts that the value of the property is $70,000.00. Her experts appraised the home at $70,000.00 and $75,000.00. She claims that the judgment liens may be avoided. The creditors contend, however, that the property value is $96,000.00 or $99,500.00 and that their liens may not be avoided.

The trial before the court focused on the valuation of the residential real estate. The court has before it the following written appraisals of the debtor's residence: David Metz's appraisal, in the amount of $70,000, dated August 8, 2001[3]; Beth Phillipy's appraisal for $96,000, dated February 13, 2003; Robert Lundquist's appraisal for $99,500, dated January 22, 2003; Beth Phillipy's second appraisal for $70,000, dated March 20, 2003; and Brian Shearer's appraisal for $75,000, dated May 13, 2003. In addition, the debtor herself has given her opinion that her home is worth $70,000. The court heard the testimony of the debtor, Beth Phillipy, Robert Lundquist, and Brian Shearer concerning their valuation of the debtor's home, as well.

The value of property is defined as "fair market value as of the date of the filing of the petition." § 522(a)(2); *see In re Vokac*, 273 B.R. 553, 556-57 (Bankr. N.D. Ill. 2002) (concluding that "the appropriate time to measure the value of the debtors' property is at the time of the bankruptcy filing"). The debtor filed her petition on January 30, 2002. In the petition she listed the value of her residence at $70,000. An owner is competent to give her opinion on the value of her property; however, courts tend to lend more weight to a written appraisal when it is performed by a qualified appraiser. *See id.* at 557. The appraisal conducted most proximately to the bankruptcy filing date is David Metz's; however, it was not admitted at trial because Metz was not available to authenticate it and to respond to questions concerning its contents. *See* Fed. R. Evid. 802. The next closest valuation to the date of the petition is the January 22, 2003 appraisal of Robert Lundquist, the certified general appraiser. Although the court had some concern, at first, that the appraisal was done almost a year after the filing of the petition, the experts who testified at trial allayed that concern when they stated that the market in Wabash County had been stable and without fluctuation for the past few years.

The court found the Lundquist appraisal particularly informative. Lundquist stated that he had considered the three traditional approaches of appraisal and, by agreement of the parties, relied on the comparable sales method rather than the reproduction cost estimate and discounted income approaches. He listed twice as

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[3] The debtor attached to her Motion to Avoid Judicial Liens the one-page conclusory opinion of David Metz that the estimated market value of the property was $70,000. Metz's full appraisal was not admitted at trial, however, because he did not appear as a witness to be questioned. *See* Fed. R. Evid. 802.

many comparable properties as the other appraisers and included photographs of those properties along with detailed information about them. He explained that the comparable sales were the most recent sales available that required the least adjustment for differences. However, Lundquist pointed out that, with respect to certain specified properties, large adjustments were made for differences in site values or for differences in condition of the property.[4] With respect to the interior inspection, he listed particular items he noticed: (1) All but one of the windows had been replaced; (2) the living and dining rooms were totally remodeled and were completed except for some minor trim; (3) the second floor bedrooms were remodeled, with new drywall and trim, except for one bedroom that needed one wall finished and some trim; (4) the kitchen was remodeled several years ago, and some of the ceramic tile floor was loose or missing; (5) the house had a newer roof; and (6) about 25% of the vinyl siding was not finished and some wood siding was exposed. See Cr. Ex. A at 5. In addition, Lundquist attached to the report more photographs of the debtor's home, interior and exterior, than the other appraisers included. The court finds that Lundquist provided more data and made more specific adjustments to the information he accumulated than the other appraisers. His written appraisal, the court finds, deserves more weight than the other written appraisals. His testimony, as well, was more thoughtful, thorough and precise in explanation than the testimony of the other witnesses, Beth Phillipy and Brian Shearer.

In fact, the court will lend no weight to the two Phillipy appraisals. The first was performed for a creditor; the second for the debtor. After her employer asked Phillipy to do a second appraisal, including an interior inspection, the value of the property dropped by $26,000, which was 27% of the first estimated valuation, and the second appraisal happened to be identical to her employer's same appraisal seven months earlier.

[4] It is noteworthy to the court that all four appraisers used, as one of the comparable properties, the residence at 1238 East 700 South, Wabash, Indiana. They all listed the sales price of $95,000. However, after making value adjustments, they listed significantly different "adjusted sales" prices. Adjustments were made for such criteria as financing concessions, sites, condition of the property, and gross living area. Beth Phillipy listed two different adjusted sales prices for that property: an adjusted sales price of $99,600 in her drive-by appraisal (which appraised the debtor's property at $96,000), and a reduced adjusted sales price of $78,600 in her second, reduced $70,000 appraisal of the debtor's home. Lundquist found its adjusted sales price to be $102,460, and Brian Shearer listed its adjusted sales price at $73,400. The varied results of such appraisals indicate to this court that valuation is an art rather than a science.

Although she stated that the interior condition of the home caused her to reduce its value, Phillipy testified that she did not get estimates for determining the cost of needed repairs. The court finds that she gave no basis for determining a fair estimate for the diminution of value based on the cost of repairs and materials. *See Colson v. Buellis (In re Colson)*, 221 B.R. 162, 164 (D. Md. 1997) (stating that the determination of diminution of value is a question of fact), *aff'd.*, 141 F.3d 1157 (4th Cir. 1998). The court will give less weight to Brian Shearer's appraisal than to Lundquist's, as well, for it contained less information and offered no evaluative comments comparing the properties. The court concludes that the value of the property found in the appraisal of the expert appraiser Robert Lundquist was the more probative appraisal; its final estimate of value was indicative of the appropriate value of the property at the time of the filing of the bankruptcy petition. *See In re Vokec*, 273 B. R. at 557. Accordingly, the court finds that the fair market value of the debtor's real estate is $99,500. The value of the debtor's interest in her residence, in the absence of any mortgage or other liens, is $99,500.

Pursuant to 522(f)(2)(A), therefore, the court sets forth the mathematical formula for determining the extent of impairment and amount of avoidance.

Fair market value of residence	$99,500.00
minus the mortgage	-66,000.00
minus the liens	-22,479.30
minus the homestead exemption	-7,500.00
Total	$ 3,520.70

The court finds that the sum of the liens and the debtor's exemption does not exceed the value of the debtor's property. In fact, the value of the debtor's property is sufficient to cover the entire amount of the debtor's mortgage and claimed exemption and liens. There is $3,520.70 of equity remaining, as well. *See East Cambridge Savings Bank v. Silveira (In re Silveira)*, 141 F.3d 34, 38 (1st Cir. 1998). For that reason, the court

finds that the judicial liens in this case do not impair the exemption of the debtor. The court determines that the debtor is not entitled to avoidance of any portion of the judicial liens.[5]

Conclusion

For the reasons presented above, the court finds that the Motion to Avoid Judicial Liens filed by the debtor Denise R. Carpenter-Foltz is denied. It has considered the debtor's motion and the objections to that motion brought by two judgment lienholders, the Frances Slocum Bank and Loew's Companies, Inc. The court determines that the fair market value of the debtor's residence is $99,500.00 and that the value of the debtor's property is sufficient to cover the entire amount of the debtor's mortgage plus her claimed exemption and the two judicial liens, with remaining equity. Therefore, the court finds that the judicial liens do not impair the debtor's exemption and that the debtor is not entitled to avoid them. Accordingly, the court denies the debtor's Motion to Avoid Judicial Liens.

SO ORDERED.

JSO1

HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

[5] Courts have interpreted the formula provided under § 522(f)(2)(A) to allow for a partial avoidance of a judicial lien when the fair market value of the property, minus the sum of the liens on the property and the debtor's exemption, produces a negative number. *See In re Vokec*, 273 B.R. at 556 (citing cases). Focusing on the phrase "to the extent that" in §§ 522(f)(1) and (f)(2)(A), they conclude that a debtor is entitled to avoid only as much of a judicial lien as is necessary to prevent impairment of the debtor's exemption within the meaning of 522(f)(2)(A). *See, e.g., In re Silveira*, 141 F.3d 34, 36 (1st Cir. 1998). The facts before the court in this case do not allow for a partial avoidance of the judicial liens, however, because the debtor's exemption was not impaired.